

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/9/10 has been entered.

Receipt is acknowledged of declaration under 1.132 filed on 7/9/10 and receipt is also acknowledged of second declaration under 1.132 and preliminary amendment and remarks filed on 10/20/10. Claims 2, 9, 12-22, 25-30, 32, 46, 48-54, and 71 have been canceled as per preliminary amendment dated 10/20/10.

Status of claims

Claims 2, 9, 12-22, 25-30, 32, 46, 48-54, and 71 are cancelled. Claims 60-70 are withdrawn from consideration as being drawn to non-elected invention (election with traverse dated 3/16/07). Claims 1, 3-8, 10-11, 23-24, 31, 33-45, 47, and 55-59 are examined in the application.

The obviousness-type double patenting rejections are maintained and in response to obviousness-type double patenting rejection, applicants state that they will file terminal disclaimer over U. S. patent 7,338,534 and also over co-pending application (10/451,409, now allowed) at the time of indication of allowable subject matter in the instant application. See final rejection dated 9/3/09.

Claim Rejections - 35 USC § 112

Claims 1, 3-8, 10-11, 23-24, 31, 33-45, 47, and 55-59 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **This is new matter rejection.**

There is lack of descriptive support in the specification or original claims for nonionic surfactant being “oxyethylenated fatty alcohols”.

In accordance with MPEP 714.02, applicants’ should specifically point out support for any amendment made to the disclosure.

Claims 7 and 23-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 23-24 lacks antecedent basis since in claim 1, formula III is drawn to Y being oxygen atom and not Y being NH.

Claim Rejections - 35 USC § 103

Claims 1, 3-8, 10-11, 23-24, 31, 33-45, 47, and 55-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of WO 02/051,369 (‘369) and U.S. Patent 4,927, 627 (‘627).

The examiner is relying on English equivalent of WO document, which is PGPUB US 2004/0074015 (‘015). Applicant’s submitted certified English translation of foreign priority

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document on 10/29/07. The publication date of WO document is July 4, 2002 and this date is before the effective filing date of the instant application, which is October 23, 2002.

PGPUB '015 teaches oxidizing compositions using claimed cross-linked amphiphilic polymer and claimed hydrophobic unit. See paragraphs 27-88 for detailed description of the claimed amphiphilic polymer and claimed hydrophobic unit (claims 2-16). See paragraphs for detailed description of the oxidizing agent and see paragraph 97 for the claimed stabilizer, see paragraphs 218-220 for anionic and non-ionic surfactants.

PGPUB teaches the limitations of claims 17-22 at paragraphs [0067-0079], teaches the limitation of claim 23 at paragraphs [0051-0053], teaches the limitation of claims 24 at paragraph [0054], teaches the limitation of claim 25 at paragraph [0055], teaches the limitations of claims 26-29 at paragraphs [0058-0059], teaches the limitations of claims 31-36 at paragraphs [0080-0082], teaches the limitations of claims 37-43 at paragraphs [0089-0091], teaches the limitations of claims 44-46 at paragraph [0094], teaches the limitations of claims 52-54 at paragraphs [0216-0232], teaches the limitation of claim 60 at paragraph [0096], teaches the limitations of claims 56-58 at paragraphs [0097], teaches the limitations of claims 55-56 at paragraphs [0253]. The difference between WO document and instant application is WO document does not teach oxidizing oil-in-water emulsion and claimed fatty alcohol.

Patent '627 teaches hydrogen peroxide emulsions for bleaching hair. Patent teaches at col.2, lines 34-45 teaches hydrogen peroxide in the form of oil-in-water (o/w) emulsions and at col.3, line 18 teaches the concentration of the hydrogen peroxide, which is the oxidizing agent claimed. Patent at col.2, lines 51-65 teach anionic and nonionic surfactant and mixture of these surfactants. See also col.3, lines 8-17. Patent at col.2, lines 56-50 teaches the claimed fatty

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alcohols and in examples teaches cetyl alcohol claimed. Patent at col.3, under (f) teaches claimed stabilizers and under (g) teaches adding buffer agents so that pH is 3-5. See examples for additives.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the compositions of 'WO document using having oxidizing agent, surfactant, stabilizer, amphilic polymer of formula I and hydrophobic unit and combine it with fatty alcohol expecting beneficial effect. One of ordinary skill in the hair care art would be motivated to prepare the compositions in the form of cream emulsion with the reasonable expectation of success that it is easier to apply the bleaching compositions in the form cream instead of hydrous as the compositions can be applied onto hair easily and it won't run off and bleaching the hair can be performed effectively. One of ordinary skill in the art would be motivated to add fatty alcohol in emulsions with the reasonable expectation of success that the viscosity of the emulsions can be controlled by means of fatty alcohol. This is a prima facie case of obviousness.

Response to Arguments

Applicant's arguments filed 7/9/10 have been fully considered but they are not persuasive.

Applicants' argue:

"The attached Declaration under 37 C.F.R. § 1.132 ("Declaration") provides that whether or not a composition comprising the amphiphilic polymer can be prepared in the form of oil-in-water emulsion possessing desirable properties is unpredictable. The '015 application describes a

gelled cosmetic composition for treating keratinous materials comprising in a carrier suitable for keratinous materials: (a) at least an amphiphilic polymer comprising at least an ethylenically unsaturated monomer with sulphonic group, in free form or partly or completely neutralized and further at least a hydrophobic part; (b) at least an oxidizing agent. See Abstract and paragraph [0001]. As indicated in the attached Declaration, composition B, which would otherwise fall within the scope of the disclosure of the '015 application except that it was prepared in the form of oil-in-water emulsion in accordance with the claims, is undesirable as a cosmetic composition for keratin fibers because it did not stay on the hair. Moreover, the '627 patent describes a composition in the form of an oil-in-water emulsion containing oil or fatty components, emulsifiers and hydrogen peroxide and, in addition, a thickening agent comprising a carboxyl-group containing polymer or copolymer. See Abstract. In the Declaration, Composition C, which would otherwise fall within the disclosure of the '627 patent except that the thickening agent was replaced by the amphiphilic polymer, is undesirable because it dephased after being stored at 2:3 °C for three days. Both Compositions B and C employed the amphiphilic polymer and were prepared in the form of oil-in-water emulsion. However, as indicated by the Declaration, they are not suitable for cosmetic composition as they either did not have the appropriate viscosity, or dephased after a short period of time. Those

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results, if not teaching away from using the amphiphilic polymer in an oil-in-water emulsion, at least display that the art with respect to the oil-in-water emulsion is unpredictable when the amphiphilic polymer is included in the composition “.

In response to the above argument, the showing in the declaration is not commensurate with the scope of claims. Composition B did not have Simethicone. Why was this component omitted in the compositions B ?

1. Declaration showed results wherein the fatty alcohol is cetyl alcohol and the weight percent is 3%. Claim 1 recites that the fatty alcohol can be C12-22 fatty alcohol and the weight percent is 0.5-15%.
2. Declaration showed results wherein the anionic surfactant is sodium lauryl ether sulfate and the weight percent is 0.5%. Claim 1 recites that the anionic surfactants can be alkyl ether sulfates, alkyl sulfates and α -olefin sulfates and the weight percent is 0.5-15%.
3. Declaration showed results wherein the nonionic surfactant is oleoyl glycerolated with 2 mol of glycerol and is oleoyl glycerolated with 4 mol of glycerol and the weight percent is 0.45% and 0.35% (mixture of nonionic surfactants). Claim 1 recites that the nonionic surfactant can be glycerolated and oxyethylenated fatty alcohols and the weight percent is 0.5-15%.
4. Declaration showed results using the combination of anionic and nonionic surfactants (mixture). Claim 1 recites that the surfactant can be anionic or nonionic.

The showing in the declaration is not commensurate with the scope of claims.

Response to Amendment

The second declaration under 37 CFR 1.132 filed 10/20/10 is insufficient to overcome the rejection of claims 1, 3-8, 10-11, 23-24, 31, 33-45, 47, and 55-59 based upon the combination of WO 02/051,369 ('369) and U.S. Patent 4,927, 627 ('627) as set forth in the last Office action because: for the following reasons.

1. Composition B did not have Simethicone. Why was this component omitted in the compositions B ?

2. Declaration showed results wherein the fatty alcohol is cetyl alcohol and the weight percent is 3%. Claim 1 recites that the fatty alcohol can be C12-22 fatty alcohol and the weight percent is 0.5-15%.

3. Declaration showed results wherein the anionic surfactant is sodium lauryl ether sulfate and the weight percent is 0.5%. Claim 1 recites that the anionic surfactants can be alkyl ether sulfates, alkyl sulfates and α -olefin sulfates and the weight percent is 0.5-15%.

4. Declaration showed results wherein the nonionic surfactant is oleth-3 and oleth-5 and the weight percent is 0.45% and 0.35% (mixture of nonionic surfactants). Claim 1 recites that the nonionic surfactant can be glycerolated and oxyethylenated fatty alcohols and the weight percent is 0.5-15%.

5. Declaration showed results using the combination of anionic and nonionic surfactants (mixture). Claim 1 recites that the surfactant can be anionic or nonionic.

The showing in the declaration is not commensurate with the scope of claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA VENKAT whose telephone number is (571)272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID BLANCHARD can be reached on 571-272-0827. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619